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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

JOANNE WARWICK,

Plaintiff-Appellant,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION,

Defendant-Respondent.

A152309

(Marin County Super. Ct.
No. CIV 1602919)

Plaintiff Joanne Warwick (Warwick) appeals the dismissal of her action against the California Department of Corrections and Rehabilitation (CDCR) based upon the trial court granting a motion for judgment on the pleadings. We affirm.

BACKGROUND

Warwick worked as a contract attorney with the California Parole Advocacy Program (CalPAP), a program providing legal representation to parolees facing parole revocation hearings. Warwick's gate clearance at San Quentin State Prison (San Quentin) was revoked by defendant CDCR and, as a result, CalPAP terminated her employment. Warwick claimed her gate clearance was revoked in retaliation for her making a variety of complaints related to her work representing the parolees and because of allegations regarding her conduct with parolees. CDCR claimed it revoked her San Quentin gate clearance due to concerns that Warwick had become too personally

involved with inmates to a degree and in a manner that could impact the facility's safety and security.

Warwick sued CDCR multiple times based upon this course of events. Each of her lawsuits has been dismissed. Warwick's first lawsuit against CDCR, and numerous others, was filed in 2009 in the Federal District Court for the Northern District of California. Her fourth amended complaint in this federal action alleged violations of her constitutional rights in suspending her gate access rights and related employment termination, and conspiracy to retaliate against her for making complaints. The district court granted a motion for summary judgment in favor of all defendants in 2010. In so doing, the district court held that Warwick failed to establish any property interest in her gate clearance that would entitle her to due process in the form of notice and appeal rights relating to the revocation of her clearance. The appeal of this ruling was dismissed by the Ninth Circuit Court of Appeals. In addition, the district court denied a motion for relief from judgment based upon "newly discovered" documents obtained from CDCR pursuant to the California Information Practices Act (IPA) (California Civil Code §§ 1798 et seq.) and the appeal of this ruling was dismissed.

In 2011, Warwick filed her second lawsuit against CDCR, this time in Alameda County Superior Court. This action brought claims under the IPA on the theory that if CDCR had complied with the IPA then Warwick would have had documents allowing her to survive summary judgment in her federal lawsuit. The trial court granted a motion for judgment on the pleadings with leave to amend on the basis of res judicata since her complaint "covered the same subject matter" as in the federal action and those assertions had been considered – and rejected – as part of the motion for summary judgment in that case. The trial court explained that "[i]n both the federal action and in this case, Plaintiff complains about the loss of her contract attorney position with the [CalPAP] due to the temporary revocation of her gate clearance at San Quentin Prison. Furthermore, Plaintiff's allegation that she was denied a fair opportunity to respond to the Motion for Summary Judgment [in the federal action] because CDCR failed to produce relevant documents in response to her requests was expressly considered and rejected" In

June 2013, the trial court granted a motion of judgment on the pleadings and dismissed Warwick's first amended complaint with prejudice, again holding that CDCR had "established that Plaintiff's claim is barred by the doctrine of res judicata."

The lawsuit at issue in this appeal, filed in 2016 in Marin County Superior Court, is Warwick's third lawsuit against CDCR and is again based on the theory that CDCR failed to comply with the IPA and thereby impacted Warwick's federal action. In her the first amended complaint (FAC), Warwick alleged IPA violations on the basis that CDCR's "incomplete and inaccurate" disclosure of documents "prevented [her] from fully and fairly litigating her federal case and her state case" in Alameda County. Warwick asserts the Marin County case contains claims distinct from the claims alleged in her previous actions because they are based on three documents she received in 2015 from CDCR in response to IPA requests: two "routing" documents and a letter Warwick drafted with some handwritten notations. In May 2017, the trial court dismissed the FAC on res judicata and collateral estoppel grounds as the gravamen of the FAC was "still a challenge to CDCR's procedures in issuing" the revocation of Warwick's gate access and the complaint did not state any facts in support of an independent IPA claim. Warwick timely appealed.

ANALYSIS

"Because a motion for judgment on the pleadings is similar to a general demurrer, the standard of review is the same. [Citation.] We treat the pleadings as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. When leave to amend is not given, we determine whether the complaint states a cause of action and whether the defect can reasonably be cured by amendment. If it can be cured, the trial court has committed reversible error. Otherwise, we affirm. The burden of proof is squarely on the plaintiff. [Citation.] The judgment of dismissal will be affirmed if it is proper on any grounds stated in the motion, whether or not the trial court relied on any of those grounds. [Citation.]" (*Baughman v. State of California* (1995) 38 Cal.App.4th 182, 187.) A trial court's application of the res judicata doctrine

is reviewed on appeal de novo. (*City of Oakland v. Oakland Police & Fire Retirement System* (2014) 224 Cal.App.4th 210, 228.)

In all three of her lawsuits, Warwick alleges that she was entitled to due process relating to the revocation of her gate clearance at San Quentin and that she was denied this due process, resulting in the loss of employment. That is the heart of all of her complaints. This issue was fully reviewed and adjudicated in the federal action in favor of CDCR and none of Warwick's subsequent claims pursuant to the IPA salvage her ability to proceed. Therefore, upon independent review of the record, we conclude we must dismiss the appeal without reaching the merits of the arguments as Warwick's lawsuit is barred by the doctrine of res judicata.

“ ‘Res judicata’ describes the preclusive effect of a final judgment on the merits. Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them. Collateral estoppel, or issue preclusion, ‘precludes relitigation of issues argued and decided in prior proceedings.’ [Citation.]” (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896.) “Under the doctrine of res judicata . . . a judgment for the defendant serves as a bar to further litigation of the same cause of action.” (*Id.* at pp. 896–897.) “Res judicata precludes piecemeal litigation caused by splitting a single cause of action or relitigating the same cause of action on a different legal theory.” (*City of Simi Valley v. Superior Court* (2003) 111 Cal.App.4th 1077, 1083.)

We are concerned here with the claim preclusion aspect of res judicata. In sum, “[c]laim preclusion arises if a second suit involves (1) the same cause of action (2) between the same parties (3) after a final judgment on the merits in the first suit. [Citations.]” (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824 (*DKN Holdings*)). In California, whether two lawsuits are based on the same “cause of action” is determined under the primary right theory. (*Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 797–798 (*Boeken*)). “Under this theory, ‘[a] cause of action . . . arises out of an antecedent primary right and corresponding duty and the delict or breach of such primary right and duty by the person on whom the duty rests. . . [Citation] . . . [¶]”

. . . . The cause of action is the right to obtain redress for a harm suffered, regardless of the specific remedy sought or the legal theory . . . advanced. [Citation] . . . Thus, under the primary rights theory, the determinative factor is the harm suffered.” (*Ibid.*) Where a lawsuit “ ‘is filed in a California state court and the defendant claims the suit is barred by a final federal judgment, California will determine the res judicata effect of the prior federal court judgment on the basis of whether the federal and state actions involve the same primary right. [Citation.]’ ” (*Acuna v. Regents of University of California* (1997) 56 Cal.App.4th 639, 648 (*Acuna*).)

It is undisputed that two of the three elements for the application of res judicata (claim preclusion) are present. (See *DKN Holdings, supra*, 61 Cal.4th at p. 824.) The federal and Alameda lawsuits involve the same parties, and the dismissals of Warwick’s federal and Alameda lawsuits constitute a final judgment on the merits for purposes of res judicata. (See *Acuna, supra*, 56 Cal.App.4th at p. 650 [federal summary judgment is a final order for purposes of res judicata]; *Boeken, supra*, 48 Cal.4th at p. 793 [dismissal with prejudice is the equivalent of a final judgment on the merits for purposes of res judicata].)

The parties’ dispute turns on the final element of whether the causes of action in the present lawsuit are the same as those raised against CDRC in Warwick’s federal and Alameda lawsuits. In her briefing, Warwick makes the confusing contentions that this case is “not about the [profanity] gatestop of 2005 . . . It is about getting the facts right . . . ,” that “the CDRC still does not acknowledge the illegality of the pulling of [her] gate clearance,” and that the CDRC has engaged in a “Code of Silence” since her gate clearance was revoked over 13 years ago. We find that the record firmly establishes that her federal and state actions arose from the violation of the same primary right as alleged in the present lawsuit: Warwick’s claim that she was harmed by the alleged denial of due process relating to the revocation of her gate clearance at San Quentin, resulting in the loss of employment.

Warwick’s attempts to frame the primary right at issue here - the alleged due process violations related to the revocation of her gate clearance - under a different legal

theory based on alleged violations of the IPA are unavailing. “[T]he determinative factor is the harm suffered” in a primary rights analysis, not the “legal theories upon which recovery might be predicated.” (*Boeken, supra*, 48 Cal.4th at p. 798; see also *Gillies v. JPMorgan Chase Bank, N.A.* (2017) 7 Cal.App.5th 907, 914 [res judicata bars a claim based on the same injury litigated in a prior action even where the new action presents new legal theories of recovery].) Further, the primary rights doctrine bars a party from re-litigating causes of action “that were, or should have been, advanced in a previous suit involving the same parties.” (See *DKN Holdings, supra*, 61 Cal.4th at p. 824.) As the Marin trial court correctly noted, although Warwick added allegations in this case concerning the three additional documents she received from CDCR in 2015, “the focus of [her] pleading is still a challenge to CDCR’s procedures in issuing a gatestop.” Hence, the prior federal judgment against Warwick functions as a bar to the instant action since it is based on the same harm to the same right, regardless of whether it is grounded in a different legal theory. (See *Agarwal v. Johnson* (1979) 25 Cal.3d 932, 954, disapproved on another ground in *White v. Ultramar, Inc* (1999) 21 Cal.4th 563, 574, fn. 4 [in determining a primary right, “the significant factor is the harm suffered”].)

Warwick alleged in her FAC that the concealment of these three documents prevented her “from fully and fairly litigating her federal case and her state case However, the trial court correctly found that her FAC “fail[ed] to draw a connection” between the three new documents and her ability to prove her prior claims. We agree with the trial court’s finding that the language in Warwick’s FAC “suggests [her] intent to connect the three documents with a due process violation. However, [the federal court] found that [she] had not established a property interest in her San Quentin gate clearance; therefore, [she] was not entitled to notice of the revocation, a hearing and an appeal.” The trial court concluded that given the analysis in the federal case, “the FAC fails to indicate that [the] admission [of the three new documents] could have possibly produced a more favorable outcome for plaintiff.” Thus, these additional documents do not entitle Warwick to relitigate her failed due process claims related to the revocation of her gate clearance.

Finally, the trial court ruled that Warwick otherwise “states no cause of action under the IPA.” Although Warwick argues in her appellate briefs that she “seeks to enforce her rights of access to California agency records and personal information about her, other injunctive and declaratory relief available, and damages under the [IPA],” she provides no authority as to how her FAC states a basis for liability under the IPA. We thus consider these arguments to be waived. (See *Pfeifer v. Countrywide Home Loans, Inc.* (2012) 211 Cal.App.4th 1250, 1282 [appeal waived where the opening brief did not include specific arguments or supporting authority]; *Cahill v. San Diego Gas & Electric* (2011) 194 Cal.App.4th 939, 956 [“ ‘Appellate briefs must provide argument and legal authority for the positions taken’ . . . [Citation] . . . ‘We are not bound to develop appellants’ arguments for them. [Citation].’ ”].)

DISPOSITION

The judgment is affirmed. CDCR is entitled to recover its costs on appeal.

Petrou, J.

WE CONCUR:

Siggins, P. J.

Fujisaki, J.